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RECENT DECISIONS

ACTIONS—VOID AND VOIDABLE CONTRACTS—RETURN OF CONSIDERATION AS CONDITION PRECEDENT TO ACTION.—Plaintiff, a passenger, was injured in a railroad accident. An agent of the defendant carrier advanced money to the plaintiff ostensibly for the purpose of enabling her to complete her journey, and obtained her signature to a paper which she did not read and which the agent led her to believe was only a receipt for the money advanced, but which was in fact a release of all claims for damages. *Held*, the plaintiff need not return the money advanced as a condition precedent to recovery. *Bissett v. Portland Ry. Light & Power Co.* (Ore.), 143 Pac. 991.

It is a general rule that where a person disaffirms a voidable contract he must return the consideration received because the right of action is based upon the subject matter of the contract made and to retain such would be inconsistent with disaffirmance. The principle involved is that one can not ratify or disaffirm a voidable contract in part, accepting the benefits without the burdens. *Indianapolis Abattoir Co. v. Bailey* (Ind.), 102 N. E. 970; *Putnam v. Boyer*, 173 Mo. App. 394, 158 S. W. 861. Even here some cases hold that a return is not necessary as a condition precedent to a right of action where the defendant is guilty of fraud and the plaintiff is unable to return the consideration. *Rase v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 118 Minn. 437, 137 N. W. 176. See *West v. Seaboard Air Line Ry.*, 151 N. C. 231, 65 S. E. 979. But in the principal case the contract under which the money was received was based on the carrier's duty to see its passengers to their destination, and not the release, as that was void for fraud in the factum. Since then the defendant neither affirms nor seeks a cancellation of the contract under which the money was paid, but sues upon the right of action arising by reason of the injuries sustained, he will not be compelled to refund as a condition precedent to bringing his action. *Miller v. Spokane International Ry. Co.* (Wash.), 143 Pac. 981; *Malkmus v. St. Louis Portland Cement Co.*, 150 Mo. App. 446, 131 S. W. 148; *Bliss v. Railroad Co.*, 160 Mass. 447, 36 N. E. 65. Void contracts are sometimes confused with voidable contracts in the application of the doctrine. See *Birmingham Ry., Light & Power Co. v. Jordan*, 170 Ala. 530, 54 South. 280; *Mahr v. Union Pacific Ry. Co.* (C. C. A.), 170 Fed. 699. Where a release is obtained by fraud in the inducement upon a claim in which the amount paid is due at any event upon a liquidated debt, as in the case of money paid in settlement of an insurance policy, no return is necessary but the amount is credited on the judgment. *Crowder v. Continental Casualty Co.*, 115 Mo. App. 535, 91 S. W. 1016.

BANKRUPTCY—TITLE OF TRUSTEE—WIDOW'S RIGHT TO DOWER AND ALLOWANCE IN THE BANKRUPT'S PROPERTY.—The law of Georgia provides that "upon the death of any person leaving an estate" his widow and chil-